

FILED
CLERK

4:52 pm, Jan 03, 2020

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ALISSA CALANDRINO on behalf of her
minor child, J.C.,

Plaintiff,

-against-

FARMINGDALE UNION FREE SCHOOL
DISTRICT, *et al.*,

Defendants.

-----X
FEUERSTEIN, District Judge:

ORDER
19-CV-0443 (SJF)(AYS)

Pending before the Court is the Report and Recommendation of the Honorable Anne Y. Shields, United States Magistrate Judge, dated December 18, 2019 (“the Report”), (1) recommending that defendants’ motion to dismiss pursuant to Rule 12 of the Federal Rules of Civil Procedure be granted; and (2) advising, *inter alia*, (a) that “[a]ny written objections to th[e] Report . . . must be filed . . . within fourteen (14) days of filing of th[e] [R]eport,” (Report at 11) (citing 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 6(a), 72(b)), and (b) that “[f]ailure to file objections within fourteen (14) days will preclude further review of th[e] [R]eport . . . either by the District Court or Court of Appeals.” (*Id.*) (citing *Thomas v. Arn*, 474 U.S. 140, 145, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985) and *Caidor v. Onondaga Cnty.*, 517 F.3d 601, 604 (2d Cir. 2008)). A copy of the Report was served upon the parties via ECF on December 18, 2019. (*See* Docket Entry [“DE”] 35). No party has filed any timely objections to the Report, nor sought an extension of time to do so. For the reasons set forth below, the Report is accepted in its entirety.

I. Standard of Review

Any party may serve and file written objections to a report and recommendation of a magistrate judge on a dispositive matter within fourteen (14) days after being served with a copy thereof. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Any portion of such a report and recommendation to which a timely objection has been made is reviewed *de novo*. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court, however, is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. *See Thomas*, 474 U.S. at 150, 106 S. Ct. 466. Where a party “received clear notice of the consequences of the failure to object” to a report and recommendation on a dispositive matter, *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992) (quotations and citation omitted); *accord Mario v. P&C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002); *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989), his “failure to object timely to [that] report waives any further judicial review of the report.” *Frank*, 968 F.2d at 16; *see also Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015); *Caidor*, 517 F.3d at 604.

Nonetheless, the waiver rule is non-jurisdictional and, thus, the Court may excuse a violation thereof “in the interests of justice.” *Neita v. Precision Pipeline Sols.*, 768 F. App’x 12, 14 (2d Cir. Apr. 29, 2019) (summary order) (citing *United States v. Male Juvenile (95-CR-1074)*, 121 F.3d 34, 39 (2d Cir. 1997)); *see also DeLeon v. Strack*, 234 F.3d 84, 86 (2d Cir. 2000). “Such discretion is exercised based on, among other factors, whether the defaulted argument has substantial merit or, put otherwise, whether the magistrate judge committed plain error in ruling against the defaulting party.” *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); *accord Neita*, 768 F. App’x at 14.

II. Review of Report

Since no party has filed any timely objections to the Report, nor sought an extension of time to do so, they have “waive[d] any further judicial review of the findings contained in the [R]eport.” *Spence*, 219 F.3d at 174. As the Report is not plainly erroneous, the Court will not exercise its discretion to excuse the parties’ default in filing timely objections to the Report in the interests of justice. Accordingly, the Report is accepted in its entirety.

III. Conclusion

For the reasons set forth above, the Report is accepted in its entirety and, for the reasons set forth therein, defendants’ motion to dismiss pursuant to Rule 12 of the Federal Rules of Civil Procedure is granted, plaintiff’s federal law claims against defendants are dismissed in their entirety for lack of subject matter jurisdiction, and plaintiff’s state law claims are dismissed without prejudice pursuant to 28 U.S.C. § 1367(c)(3). Pursuant to 28 U.S.C. § 1367(d), the statute of limitations for any state law claims timely filed in this Court is tolled for a period of **thirty (30) days after the date of this order** unless a longer tolling period is otherwise provided under state law. *See generally Artis v. District of Columbia*, --- U.S. ---, 138 S. Ct. 594, 598, 199 L. Ed. 2d 473 (2018). The Clerk of the Court shall enter judgment in accordance with this Order and close this case.

SO ORDERED.

/s/ Sandra J. Feuerstein
SANDRA J. FEUERSTEIN
United States District Judge

Dated: January 3, 2020
Central Islip, New York